IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 889 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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KARTARSING JAYMALSINH SHIKH & 1 - Appellant(s)
Versus
PRABHULAL RUPLAJI VYAS & 2 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1 - 2.
MR NS SHETH for Defendant(s) : 1,
MR MD PANDYA for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 31/07/2006

ORAL JUDGMENT

1. This appeal under Section 110-D of the Motor Vehicles Act, 1939 is directed against the judgment and award dated 17.9.1984 passed by the Motor Accident Claims Tribunal (Main) Narol in M.A.C.P. No. 75 of 1982 whereby Tribunal directed the original applicant to recover Rs. 30,300/- from original opponent Nos. 3 and 4.

2. It is the case of the original applicant that on 19th November, 1980, the original applicant was travelling in taxi No. R.S.T. 6141 from Gandhinagar to Ahmedabad. At that time S.T. Bus bearing Registration No. G.R.T. 6940 came and dashed with the right front side of the taxi. As a result of this accident the original appellant and other persons who were sitting in the said taxi were injured. Therefore he claimed upto the tune of Rs. 50,000/-

3. Mr. Mehta, learned advocate for the appellant has submitted that the Tribunal ought to have appreciated that IMT 16 cover will allow the driver to claim compensation under the Workmen's Compensation Act for his own negligence and the Tribunal has no jurisdiction to decide that issue.

4. It is a well settled law that the original claimant cannot claim any damages for his own negligence and at the best he is entitled to claim compensation under the Workmen's Compensation Act has not been decided by the Tribunal. Though the Insurance Company is liable under Workmen Compensation Act, since the driver himself is claimant and he was employed of the insured, the

contentions raised by Insurance Company is required to be accepted.

5. In the premises aforesaid this appeal is required to be allowed. Accordingly the appeal is allowed. The impugned award qua the appellant insurance company is quashed and set aside. The amount lying in the F.D.R. shall be repaid to the Insurance Company. However if the amount has already been withdrawn by the claimant the same shall not be recovered. It will be open to the insurance company to recover ***Rs. 7,560/-*** from the original insured (owner of the vehicle).

(K.S.JHAVERI, J.)

Suresh*